United States Senate
WASHINGTON, DC 20510

July 8, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

The Honorable Shaun Donovan
Director
Office of Management and Budget
725 17th Street, N.W.
Washington, DC 20503

Dear Administrator McCarthy, Secretary Vilsack, and Director Donovan,

We write to express deep concern with President Obama's attempt to bypass Congress and commandeer the state regulatory process to impose unduly burdensome carbon-emissions regulations at existing power plants; the so-called Clean Power Plan (CPP). Our fear is that the CPP would create significant technological and economic challenges that disproportionately affect Arizonans.

As proposed, the CPP would force Arizona, unlike almost any other state, to achieve a 52% reduction in its carbon-emissions by 2030, with nearly 90% of that reduction (equivalent to re-dispatching all of Arizona's coal-fired baseload generation) coming within five years. The plan effectively ignores Arizona's zero-emission nuclear asset, Palo Verde Generating Station, and gives little credit for the widespread deployment of renewable technology throughout the state. Instead, the plan charges head long toward dictating Arizona's resource portfolio and regulating beyond the fence line.

Shrouded by the veil of choice, EPA contends that Arizona can use a combination of options (aka "building blocks") to achieve these targets. In reality, the CPP treats Arizona so harshly that it would be compelled to maximize the use of all its building block "options" just to comply with the rule. This is hardly a choice. Rather, as explained by Harvard law professor Laurence

Tribe, the proposed plan would effectively dictate the energy mix in each state, allowing a federal commandeering of state governments and violating principles of federalism that are basic to our constitutional order.

As an example, EPA expects Arizona to redispatch coal-fired generation almost entirely with increased natural gas generation. Yet, EPA ignores that more than half of the state's existing natural gas capacity is merchant capacity, not owned by Arizona utilities. Moreover, Arizona's natural gas generating units are often used to manage the diverse energy portfolio, including renewable supplies, meaning that increased baseload use of those resources limits their ability to assist with intermittent generation. Mistakenly, EPA assumes that Arizona can quickly transition from coal generation to natural gas generation by making greater use of existing natural gas facilities. The EPA is not taking into consideration the peak customer energy demands the state requires in the summer months or the current natural gas infrastructure in place.

Converting coal resources to natural gas will also leave millions of dollars in stranded assets in which plants are forced to close before their useful life. As you are well aware, utilities throughout the state have recently retrofitted a number of these units to comply with other EPA regulations, such as the regional haze rule. It is unreasonable for EPA to compel utilities and their ratepayers to comply with one rule, only to render those investments wasted just a couple of years later under a different rule.

Utilities and pipeline providers would, therefore, be forced to spend billions of dollars on new energy infrastructure which could take years to plan, implement, and negotiate. The state's year-round energy needs simply cannot be replaced by natural gas-fired plants in time for the CPP's 2020 interim deadline.

As the Supreme Court recently found, these types of economic issues are not "irrelevant" to the rulemaking process. They must be considered, rather than marginalized. And, in this case, it is not simply the stranded cost of investing in new emissions technology or the increased rates; it is also the impact on other areas of the state's economy, such as water deliveries that depend on energy. An increase in water-delivery costs, particularly during the ongoing drought, will only serve to further harm consumers.

This situation is no doubt exacerbated by the possibility that taxpayers could also pay more for this rule, as it threatens to cause default on over $250 million in taxpayer-backed Rural Utilities Service (RUS) loans in Arizona. But, Arizona's coal plants, including those with expensive air pollution controls, will not operate long enough under the CPP to pay these loans back. Shuttering Arizona's coal plants before their useful life is completed will challenge rural electric cooperative's ability to pay back those loans.

In an effort to address many of these concerns, on December 1, 2014, the Arizona Department of Environmental Quality (ADEQ) in concert with the Arizona Utility Group, proposed a compliance plan that would work for Arizona. They suggested narrowly modifying EPA's CPP to allow newer, more efficient coal-fired power plants to continue to fully operate after 2030. This more gradual plan would ensure that investments in expensive emission control technologies will not be stranded and that the CPP's impact on Arizonans will be mitigated.

With the proposed final rule currently pending before OMB, we would appreciate your consideration of the Arizona Utility Group proposal and our concerns, as well as a written response to the following questions no later than July 27, 2015:

1. What cost-benefit analysis was conducted in connection with the Administration's decision to go forward with this rule? Specifically, what is the expected aggregate economic impact of this rule on Arizona businesses and consumers?
2. The USDA has indicated that $254.8 million is held through RUS loans in Arizona. What is the value of these loans that USDA holds nationally?
3. Is the OMB taking the significant loss of taxpayer investment in these loans into consideration of the EPA's final rule?
4. If the rule is approved and Arizona's rural energy providers are forced out of business, what happens to the existing loans?

Thank you for your attention to this matter, I look forward to your response.

Sincerely,

John McCain
United States Senator

Jeff Flake
United States Senator